



Robert J. Genis | Admitted in NY, NJ, CT  
Sherri Sonin (1957-2017)

Max Silverberg | Admitted in NY  
Walter J. Hayes | Admitted in MA

August 31, 2023

Hon. Robert W. Lehrburger  
United States Magistrate Judge  
United States District Court for the Southern District of New York  
500 Pearl Street  
New York, NY 10007-1312

Re: Diana Martinez v. United States of America  
19 CV 5582 (RWL)

Honorable Sir:

As this Honorable Court is aware, I represent the plaintiff in the above captioned medical malpractice matter. Please allow this letter to serve as a follow up to Plaintiff's August 15, 2023 status update and request for a Discovery Conference regarding outstanding discovery issues. (*See* Docket Number 56)

Pursuant to this Honorable Court's August 15, 2023 instructions (Docket Number 57), the parties engaged in a "meet and conferral" last week, and I had subsequent emails and conversations with some of the lawyers involved this week.

The gravamen of this medical malpractice case is a failure to timely communicate the radiological findings of the CT scan by Envision (taken at state court defendant Bronx Lebanon Hospital at the behest of Casa del Salud/USA, and a failure to timely treat the plaintiff for the condition revealed by the CT scan (Casa del Salud/USA). Plaintiff is not claiming that the CT film was misread or misinterpreted.

Envision Radiology, a non-party in this case and a party in the parallel state court action, has declared bankruptcy and as such has stayed the proceedings in the state court

action. This is the reason that the deposition of a physician from Casa Del Salud/USA was postponed.

During our conference, the parties discussed how if the depositions proceeded without Envision participating or producing a witness, all parties may suffer prejudice. To that end, the parties discussed the possibility of entering into a stipulation whereby plaintiff agrees to limit any possible recovery to the amount of Envision's liability insurance coverage. While Plaintiff is agreeable to this proposition, it has been difficult to obtain Envision's consent as the liability counsel in the state action is not the counsel for the company in the bankruptcy matter. It is plaintiff's understanding that the liability counsel has been trying to reach the bankruptcy counsel who has not been responsive.

I had a subsequent conversation with Envision's liability counsel regarding obtaining an affidavit by a witness with knowledge that addresses the duties of Envision and its radiologists in situations similar to the ones in this matter. If the proposed affidavit furnishes sufficient proof that it was not Envision's duty to communicate the radiological finding but that of another party, then plaintiff will consider discontinuing her claims against Envision.

Thus, there are two possible ways to address Envision's bankruptcy stay and the impact it is having. The parties are working on both as well as trying to ascertain how the stay can be lifted in the State Court matter.

However, the foregoing would require this Honorable Court to once again extend the time for fact and expert discovery. While Plaintiff understands this Honorable Court's concerns regarding the time it is taking to move this case, as set forth above, many of the

issues that have been encountered have been outside the control of the parties. As such, plaintiff respectfully requests such an extension. A proposed discovery order is annexed hereto. In the alternative, Plaintiff submits a discovery conference to discuss how this Honorable Court would like the parties to proceed so that this case moves forward but without prejudicing the rights of anyone might be preferable given the issues that have arisen in this matter.

Lastly, plaintiff notes that the USA has, in fact, served the policies of Casa Del Salud, and I personally apologized to the AUSA about this issue. I apologize again and give my sincerest apologies to this Honorable Court for my prior and inadvertent misstatement on this issue.

Thank you for your attention to this matter.

Respectfully submitted,

*Robert J. Genis*

Robert J. Genis

CC: United States Attorney, Southern District of New York ([brandon.cowart@usadoj.gov](mailto:brandon.cowart@usadoj.gov))(via ECF)

Counsel for State Court Action

Bronx Lebanon Defendants

Laura B. Jordan - [laura.jordan@wilsonelser.com](mailto:laura.jordan@wilsonelser.com)

James W. Kachadoorian - [james.kachadoorian@wilsonelser.com](mailto:james.kachadoorian@wilsonelser.com)

Zoran G. Kuljis - [zoran.kuljis@wilsonelser.com](mailto:zoran.kuljis@wilsonelser.com)

Envision Healthcare Defendants

Christopher A. Terzian - [christopher.terzian@mcblaw.com](mailto:christopher.terzian@mcblaw.com)

Christopher J. Daniel - [christopher.daniel@mcblaw.com](mailto:christopher.daniel@mcblaw.com)